

MEMORANDUM OF LAW

DATE: March 18, 1987

TO: Councilmember Abbe Wolfsheimer

FROM: City Attorney

SUBJECT: Initiative vs. Vesting Tentative Map

Your memo of February 19, 1987, asked whether an initiative supersedes a vesting tentative map.

A vesting tentative map is defined in California Government Code Section 66424.5 as a map made for the purpose of showing the design and improvement of a proposed subdivision and the existing conditions in and around it and need not be based upon an accurate or detailed final survey of the property. A vesting tentative map must meet the requirements of Section 66452.

Section 66452 provides as follows:

(a) A tentative map shall be filed with the clerk of the advisory agency or, if there is no advisory agency, with the clerk of the legislative body, or with any other officer or employee of the local agency as may be designated by local ordinance.

(b) A vesting tentative map shall be filed and processed in the same manner as a tentative map except as otherwise provided by this division or by a local ordinance adopted pursuant to this division.

(c) At the time a vesting tentative map is filed it shall have printed conspicuously on its face the words "Vesting Tentative Map."

The specific provisions applicable to vesting tentative maps are contained in California Government Code Section 66498.1, et seq., a copy of which is attached. Of particular interest are the provisions of Section 66498.1(b) which provide:

(b) When a local agency approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Section 66474.2. However, if Section 66474.2 is repealed, that approval shall confer a vested right to proceed with development in substantial

compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved.

The standards and policies which may be applied, referred to in the subsection quoted above, are those reflected in ordinances, policies and standards in effect at the date the local agency has determined that the application is complete. (Section 66474). When the vesting tentative map is approved, the right to develop continues in effect for not less than two years from the date of recording of the final map. (Municipal Code Section 102.0312.5.)

As stated in Section 66498.1(b), "approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards . . . ." These vested rights would not be superseded by subsequently enacted ordinances which change the regulations applicable to the project. The manner in which the ordinance was enacted, whether by action of the City Council or by initiative, would not extinguish the rights which had vested. The only apparent exception would be the enactment of a moratorium on development which had been enacted by the City Council or by initiative. However, such legislation could not alter the vested rights but could suspend those rights for a specified period following the expiration of which the development could proceed. This eventuality is covered by Section 66452.6(b) which provides:

(b) The period of time specified in subdivision (a) shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

Once a moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that

the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

Based on the foregoing analysis, it is our opinion that an initiative measure designed to change any ordinance, policy or standards relating to property for which a vesting tentative map has been approved would not be applicable to the vesting tentative map.

JOHN W. WITT, City Attorney

By

Frederick C. Conrad

Chief Deputy City Attorney

FCC:cc:600(x043.2)

Attachment

ML-87-29